

# We Concur: Courts Unanimously Say Payday Loan Apps Subject to the Military Lending Act

The **Military Lending Act (MLA)** was passed in 2006 with bipartisan support to offer vital consumer protections to active-duty military service members against predatory lenders. Prior to the passage of the MLA, payday lenders often based their storefronts near military bases to trap service members in loans with outrageously high interest rates that lead to a cycle of debt. The MLA caps the annual interest rate to service members and their dependents at 36 percent, all-in, including fees and other costs. It also prevents active-duty military members and their families from being forced into mandatory arbitration, a process that prevents borrowers from asserting their rights in court.

## Courts unanimously agreed that payday loan apps are very likely loans:

The U.S. District Court for the Northern District of California held that plaintiffs sufficiently alleged that EarnIn is making loans.

The U.S. Court for the District of Maryland held that plaintiffs sufficiently alleged that EarnIn violated Maryland law by making loans without a license and with interest rates that exceed the maximum APR.

The U.S. District Court for the Eastern District of Pennsylvania held that the expedite fees and tips EarnIn solicits are plausibly considered finance charges.

The U.S. District Court for the Western District of Washington held that Cleo's loan product is credit, and that expedite fees and subscription fees are finance charges.

The U.S. District Court for the Northern District of California held that loans issued by Empower are "credit" under the MLA and TILA, and that subscription fees and instant transfer fees are "finance charges."

The U.S. District Court for the Central District of California found that Dave likely offers credit and that fees are finance charges within the meaning of TILA and the MLA notwithstanding the fact that it is styled as an overdraft.

The U.S. District Court for Massachusetts found that FloatMe loans are credit under the MLA and TILA.

The US District Court for the Southern District of New York found that MoneyLion's Instacash product is an extension of consumer credit.

## What does this have to do with payday lending apps?

**Payday lending apps**, marketed as Earned Wage Advance, attempt to circumvent the MLA by claiming they are not loans because they are "non-recourse." This is both a legal fiction and a practical one. Payday app lenders are virtually guaranteed repayment, and recoup their investment 97% of the time because they have access to the borrower's bank account. Repayment is part of the agreement between borrowers and the loan app, and it is expected by payday loan app lenders.

As military borrowers have begun asserting their rights, lenders have begun making these baseless assertions in court, where they have been rejected repeatedly. To date courts have unanimously found that payday loan apps are likely loans under both the Truth in Lending Act and the Military Lending Act.

## Why does it matter?

The **Military Lending Act** is a landmark bipartisan achievement. Before it was implemented, debt from high-cost lending products like payday loans posed security clearance risks and in some cases resulted in a dishonorable discharge. Payday loan debt could literally end careers before they started.

Payday loan shops used to line the streets outside military bases. Now, they line the app store.

